Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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Director, Office of Governmental Affairs

March 20, 2012

Hon. Steven Knight
Member of the Assembly
State Capitol, Room 4015
Sacramento, California 95814

Subject: AB 2163 (Knight), as introduced - Oppose

Dear Assembly Member Knight:

The Judicial Council regrets to inform you of its opposition to AB 2163, which, among other things, would significantly expand the application of the recently-enacted expedited judicial review procedures in AB 900 ([Buchanan and Gordon], Stats. 2011, ch. 354) to a much broader category of projects.

AB 900, the "Jobs and Economic Improvement Through Environmental Leadership Act of 2011," provided, among other things, that a person or entity that undertakes a public works project that meets certain eligibility criteria may apply to the Governor to have the project designated as an "environmental leadership development project." Once designated as a leadership project, any action or proceeding alleging that the project was approved or undertaken in violation of the California Environmental Quality Act (CEQA) is required to be conducted under specified expedited judicial review procedures. These procedures require, among other things, that such actions are to be filed directly in the Court of Appeal with geographic jurisdiction over the project, and the court must issue its decision in the case within 175 days of the filing of the petition. (See Public Resources Code section 21185(a)(1), (3).)

AB 900 also requires the Judicial Council, on or before July 1, 2012, to adopt Rules of Court to implement its expedited judicial review provisions. (See Public Resources Code section 21185(b).) In addition, AB 900 requires the council to conduct a study and report to the Legislature, on or before

January 1, 2015, on the impacts of this expedited judicial review process on the administration of justice. (See Public Resources Code section 21189.2[1].)

The Judicial Council did not take a position on AB 900 because of the speed with which the bill moved through the legislative process last year. A variety of concerns about this expedited judicial review process were conveyed informally to the Legislature, a number of which have been addressed. Significant concerns remain, however, which subsequently have been identified more fully during the council's AB 900 rulemaking process.

Because AB 2163 seeks to substantially expand the scope of AB 900 to cover a much broader category of cases, all of the concerns set forth below about this expedited judicial review process would be exacerbated. It is important to note that the Judicial Council's concerns regarding AB 2163 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the job creation goals of the legislation, as those issues are outside the council's purview.

First, the appellate courts are not well-suited for this process. The Court of Appeal is not designed to be the court of first resort; it has been structured for the general purpose of developing the law through review of trial court decisions. Additionally, the courts of appeal are much smaller than the superior courts, with fewer judicial officers and fewer locations. Therefore, the Court of Appeal can only handle a relatively small volume of cases, cases are not generally heard at a location close to the parties, and the opportunities for review of a Court of Appeal decision are extremely limited. If the first level of the court system is skipped over, the Court of Appeal will quickly be overwhelmed, especially given the anticipated high volume and complex nature of the cases that would be eligible under AB 2163 for this expedited treatment.

Second, proceeding directly in the Court of Appeal is a very inefficient method of handling these complex CEQA cases. Review in the Court of Appeal involves three justices, rather than one judge. The salaries for justices and Court of Appeal staff are typically higher than the salaries of superior court staff. Therefore, the cost of review in the Court of Appeal is likely to be higher than in the superior court. Second, because three justices must agree on and coordinate the drafting of a decision, it may take more time for the Court of Appeal to decide these matters than it would for a single judge in the superior court. While the Court of Appeal has historically reviewed those superior court CEQA decisions that are appealed, only a fraction of superior court decisions are appealed and the issues on appeal are typically much narrower than those raised in the trial court, lessening the resources that need to be devoted to these cases.

Third, the requirement for the Court of Appeal to issue its decision within 175 days appears to be infeasible. During the council's development process for the rules to implement AB 900, it became

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[1] The study language in AB 900 was inadvertently written more broadly, but clean-up legislation that is pending in the Legislature would make clear that its focus is limited to the impacts on the administration of justice. (See Sec. 7 of SB 52, which is available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0051-0100/sb_52_bill_20120131_amended_sen_v96.pdf.)

clear that 175 days seems to be an unrealistically short timeframe to decide a large CEQA matter. Even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to oral argument, much less to issue a decision, in the majority of these cases.

Fourth, this expedited judicial review scheme will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the court's docket to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the dire fiscal straits being faced by the judicial branch since the appellate courts are facing a 9.7% reduction in their budget this year, potentially growing to 15% or more in the next fiscal year.

Fifth, providing expedited judicial review directly in the Court of Appeal for some cases while other cases are subject to original jurisdiction in the superior court, in our view, undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets, without regard to the economic position of the parties. Singling out this special category of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, notwithstanding the significant concerns noted above, the Judicial Council believes it is premature for the Legislature to expand AB 900 to a broader category of cases before the impacts of this unprecedented expedited judicial review scheme on the courts and the administration of justice have been assessed through the statutorily mandated study.

For all of these reasons, the Judicial Council opposes AB 2163.

Sincerely,

Daniel Pone
Senior Attorney

DP/lp
cc: Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Fredericka McGee, General Counsel, Office of Assembly Speaker John A. Pérez
Ms. Susanna Schlendorf, Chief of Staff, Office of Assembly Member Joan Buchanan
Mr. Harry Ermoian, Capitol Director, Office of Assembly Member Richard S. Gordon
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee
Mr. Mark Redmond, Counsel, Assembly Republican Office of Policy
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Mr. John Kennedy, Consultant, Assembly Republican Office of Policy

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April 2, 2012

Hon. Wesley Chesbro, Chair
Assembly Natural Resources Committee
State Capitol, Room 2141
Sacramento, California 95814

Subject: AB 2163 (Knight), as introduced – Oppose
Hearing: Assembly Natural Resources Committee – April 16, 2012

Dear Assembly Member Chesbro:

The Judicial Council opposes AB 2163, which, among other things, would significantly expand the application of the recently-enacted expedited judicial review procedures in AB 900 ([Buchanan and Gordon], Stats. 2011, ch. 354) to a much broader category of projects.

AB 900, the "Jobs and Economic Improvement Through Environmental Leadership Act of 2011," provided, among other things, that a person or entity that undertakes a public works project that meets certain eligibility criteria may apply to the Governor to have the project designated as an "environmental leadership development project." Once designated as a leadership project, any action or proceeding alleging that the project was approved or undertaken in violation of the California Environmental Quality Act (CEQA) is required to be conducted under specified expedited judicial review procedures. These procedures require, among other things, that such actions are to be filed directly in the Court of Appeal with geographic jurisdiction over the project, and the court must issue its decision in the case within 175 days of the filing of the petition. (See Public Resources Code section 21185(a)(1), (3).)

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Because AB 2163 seeks to substantially expand the scope of AB 900 to cover a much broader category of cases, all of the concerns set forth below about this expedited judicial review process would be exacerbated. It is important to note that the Judicial Council's concerns regarding AB 2163 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the job creation goals of the legislation, as those issues are outside the council's purview.

First, the appellate courts are not well-suited for this process. The Court of Appeal is not designed to be the court of first resort; it has been structured for the general purpose of developing the law through review of trial court decisions. Additionally, the courts of appeal are much smaller than the superior courts, with fewer judicial officers and fewer locations. Therefore, the Court of Appeal can only handle a relatively small volume of cases, cases are not generally heard at a location close to the parties, and the opportunities for review of a Court of Appeal decision are extremely limited. If the first level of the court system is skipped over, the Court of Appeal will quickly be overwhelmed, especially given the anticipated high volume and complex nature of the cases that would be eligible under AB 2163 for this expedited treatment.

Second, proceeding directly in the Court of Appeal is a very inefficient method of handling these complex CEQA cases. Review in the Court of Appeal involves three justices, rather than one judge. The salaries for justices and Court of Appeal staff are typically higher than the salaries of superior court staff. Therefore, the cost of review in the Court of Appeal is likely to be higher than in the superior court. Second, because three justices must agree on and coordinate the drafting of a decision, it may take more time for the Court of Appeal to decide these matters than it would for a single judge in the superior court. While the Court of Appeal has historically reviewed those superior court CEQA decisions that are appealed, only a fraction of superior court decisions are appealed and the issues on appeal are typically much narrower than those raised in the trial court, lessening the resources that need to be devoted to these cases.

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